IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6357 OF 2006

Mr.Roopchand S. Jain. .. .. Petitioner
v/s.
Union of India & ors. .. .. Respondents

Mr.N.Y.Gupte for petitioner.
Mr.Ashok Kotangale with Mr.S.R.Chauhan and
Mr.A.D.Nagarjun for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 10th October 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioner herein is a proprietor of a construction Company. He has been in tax arrears to the tune of Rs.1,28,71,976/-. A property being building Tower No.38 situated at Survey No.728 (new Survey No.121) at Rashmi Park, Mira Road (E), Thane has been attached for recovery of these income-tax arrears by attachment order dated 16th January 2006. The Petition has been filed to challenge that attachment as well as another order of attachment dated 17th January 2006 concerning the property bearing Survey Nos.476 and 477 at Mira Road and also the attachment of property bearing survey No.476 (Part) situated at Mouje Bhayander.

3. A reply has been filed by one Shri V.H. Bhogare, Tax Recovery Officer, Range-2, Thane and he has enclosed a letter dated 20th February 2006 addressed to the petitioner, whereby the attachment order with respect to the property bearing survey Nos.476 and 477 has been vacated. Now, the present grievance of the petitioner is only with respect to the attachment on Tower No.38 and property bearing Survey No.476 (Part).

4. The petitioner has admitted the liability to the tune of Rs.88,16,274/-. He has offered to make a down payment of Rs.38,16,274/- and also a further amount of Rs.Five Lacs by Pay Order.

5. Mr.Gupte appearing for the petitioner states that this amount of Rs.38,16,274/- will be paid within two weeks. He has also handed over a Pay Order of Rs.Five Lacs in Court which has been received by Shri V.H. Bhogare, Tax Recovery Officer, Range-2, Thane. Out of the remaining amount of Rs.45,00,000/-, Mr.Gupte submits that six flats in Tower-C situated on survey Nos.728/476/477, which is another attachment, may be sold. This may enable the Revenue to recover a sum of Rs.27,00,000/- additionally, leaving the

balance amount of Rs.18,00,000/-. Mr.Gupte states that the petitioner will offer to clear this amount of Rs.18,00,000/- within two months. His request is that in view of this offer made by the petitioner, the attachment on the property bearing Survey No.476 (Part) may be lifted. The attachment on Tower No.38 situated on Survey No.728 will continue.

6. Mr.Kotangale appearing for the Revenue has taken instructions from the officer concerned and he has left it to the Court to pass appropriate orders.

7. The submission of Mr.Gupte is that the work of number of constructed buildings of the petitioner is stuck up because of this attachment. The petitioner is now taking steps to clear these arrears in the manner as stated above. The petitioner has filed an affidavit recording his offer. In our view, if the arrears are going to be cleared in the manner as suggested above, there is no reason why the attachment on one of the properties should be continued any further.

8. Accordingly, we direct the respondents to receive a payment as offered by the petitioner. The petitioner has already made the payment of Rs.Five Lacs and he will make further payment of

Rs.38,16,274/- within two weeks, whereafter the attachment on the property bearing Survey No.476 (Part) situated at Mouje Bhayander will stand lifted. We accept this undertaking of the petitioner to make a payment of Rs.18,00,000/- within two months hereafter. As stated earlier, it will be open to the Revenue to proceed to dispose of the six flats in Tower-C which are under attachment.

9. Later part of prayer (a) of this Petition is directed against respondent No.4 that he should register all documents entered into by the petitioner with third parties. Respondent No.4 is not present, though served. As far as the property bearing Survey Nos.476 and 477 is concerned, there should be no difficulty in registering the documents concerning any of the flats constructed over there since the attachment is already lifted by the Revenue by its order dated 21st February 2006. As far as the other flats are concerned, the officer will register the documents after receiving the letter from the Tax Recovery Officer that this remaining amount of Rs.27,00,000/- is already received after auction of the flats.

10. In view of the above, the Petition is disposed of.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)